IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1040 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

PRAFFULABEN WD/O VINODCHANDRA SONI

Appearance:

1. First Appeal No. 1040 of 1988

MR MAYA DESAI FOR

MR MD PANDYA for Petitioner No. 1-2

MR SHANTILAL S SHAH for Respondent No. 1-4

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 26/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The appellants are Gujarat State Road Transport Corporation and its driver Ramanlal Pursottamdas Sevak. They have challenged in this appeal the impugned judgment and award passed by the Motor Accident Claims Tribunal (Main), Panchamahals at Godhara in Motor Accident Claim Petition No. 51 of 1985, whereby the learned Tribunal has awarded in all Rs.2,26,000/- with interest at the rate of 12% p.a. from the date of the application till its realization and with proportionate costs, to the claimants Prafullaben widow of deceased Soni Vinodchandra Ochchhavlal and minor Shilpaben daughter of deceased Soni Vinodchandra Ochchhavlal and minor children of deceased Vinodchandra, against the claim of Rs.3,92,000/-.

2. Against the aforesaid award, the cross-objections were filed in the year 2002 after 14 years of this appeal by the claimants claiming Rs.2,66,000/- instead of Rs.2,26,000/- awarded by the Tribunal, with 18% p.a. interest.

3. Deceased Vinodchandra was going on his motorcycle No. GTH 4546 from Lunawada to Virpur about 5-15 p.m. on 24-12-1084. At that time, S.T. Bus No. GRR 9145 driven by its driver Ramanalal Pursottamdas Sevak coming from the opposite direction knocked down with the motorcycle and crushed the deceased Vinodchandra under its wheel and because of the accident deceased Vinodchandra had profusely bleeding and died on the spot and because of dragging he had incurred fracture on both arms and legs.

4. From the panchanama exh.24 it clearly appears that after the accident the motorcycle was dragged at distance of 103 feet and the deceased Vinodchandra was crushed under the bus. Admittedly, there were no drag marks of either of the vehicles. Ramanlal Pursottamdas Sevak driver of the bus is examined at exh. 56. He has stated in his evidence that the motorcycle was coming from the opposite direction with excessive speed and in the process it dashed on the left hand side of the bus and because of that the glass of the head light of the bus was broken. As soon as the accident took place, he immediately stopped the bus there and there and got down from the bus. He saw the deceased in great pain. Being afraid that he might be beaten by the people of the vicinity, he ran away from the place and went to the police station and took the shelter where he lodged F.I.R. exh. 33. However, he has denied that after the impact the motorcycle dragged upto 103 feet.

5. Considering his oral evidence with the documentary evidence exh.24 panchanama, the learned Tribunal totally discarded the evidence of the driver Ramanlal Sevak. Relying upon the documentary evidence panchanama exh. 24 the learned Tribunal held that man may lie but the circumstances may not. Considering the averments made in the panchanama that after the impact the motorcycle was dragged upto 103 feet and in spite of that there was no brake marks of either of the vehicles and that there was impact on the left side of the bus which shows that the bus left its correct side and went to the wrong side and dashed with the motorcycle, and the important aspect of the case namely is that there were drag marks of the motorcycle on the road from eastern side to western side for about 7 feet, and that the width of the road was 12 feet. The panchanama shows that the bus went to its wrong side as it was coming from north and going to south, the learned Tribunal held that the bus driver was solely negligent for causing fatal accident.

6. Ms. Desai, learned advocate for the appellant vehemently submitted that the bus was on its correct side of the road i.e. eastern side and the panchanama shows that at the time of the accident, it was on its correct side. She, however, submitted that it is duly corroborated by the oral evidence of the driver of the bus Ramanlal Sevak. Having carefully gone through the oral evidence of Ramanlal Sevak driver of the bus and the documentary evidence panchanama exh. 24 we are unable to accept the submissions made by Ms. Desai for the appellants that the deceased driver of the motorcycle was also negligent and contributed to the accident. This is glaring case of rash and negligent driving of the bus driver. The material on the record shows that it was hilly area. The deceased was coming down from hill on his motorcycle. Whereas the bus was going upward on the hill. If that is so, it is clear from the fact of motor-cycle being dragged for 103 feet that while climbing the hill the driver of the bus must have been driving the bus with an excessive speed.

7. In view of the above discussion, we do not find any substance in the submission made by Ms. Desai that the Tribunal has committed error in awarding 100% negligence to the driver of the bus. This brings us to the another submission made by Ms. Desai regarding the interest. According to Ms. Desai, the learned Tribunal ought not to have awarded more than 9% p.a. interest. She, therefore, submitted that the learned Tribunal was

wrong in awarding interest at the rate of 12% p.a. from the date of the application till its realization. Ms. Desai has relied on the judgment of the Supreme Court in the case of Kaushnuma Begum & Ors. V. New India Assurance Co. Ltd. & Ors. reported in 2001 (1) G.L.R. 593.

8. While appreciating the above contention of Ms. Desai, we have to keep in mind the cross-objections filed by the claimants in this appeal. By way of cross-objections, the claimants have prayed that the learned Tribunal has wrongly awarded Rs.2,26,000/- by way of compensation with interest at the rate of 12% p.a. from the date of the application till its realization. In the cross-objections, the claimants have claimed Rs.2,66,000/- with interest at the rate of 18% p.a. from the date of application till its realization.

9. In the instant case, the learned Tribunal has assessed the dependency loss at the rate of Rs.1,200/p.m. and applying 15 years' multiplier, the learned Tribunal has awarded Rs.2,16,000/- and adding conventional figure of Rs.10,000/- by way of future expectation of life, the Tribunal has awarded in all Rs.2,26,000/-.

10. It may be stated that in the evidence of claimant Prafullaben widow of the deceased Ramanlal Sevak, a suggestion was made in her cross-examination that the income of the deceased Ramanlal Sevak was about Rs.1,500/- p.m. At the time of the accident, the deceased was about 37 years. It appears to us that deducting Rs.400/- p.m. towards personnel expenses of the deceased, the learned Tribunal has taken figure of Rs.1,200/- p.m. without considering future rise of the income and applying 15 years' multiplier, the learned Tribunal has awarded only Rs.2,16,000/-. If the learned Tribunal had taken into consideration the future rise of the income of the deceased then we are sure that the learned Tribunal would have awarded more than what has been awarded to the claimants for loss of dependency. Under the circumstances, when the learned Tribunal has awarded 12% p.a. interest, which is slightly on higher side, we do not propose to interfere with the same.

11. We may also state that this is an appeal of 1988 which was listed before us for the 7th time in the end of 2002. If it was heard and disposed of prior to 2000, then, the judgment of the Supreme Court in the case of Kaushnuma Begum reported in 2001 (1) G.L.R. 590 would not have come to the rescue of the appellants. Under the circumstances, when just and proper amount of

compensation is awarded with interest at the rate of 12% p.a. by the learned Tribunal, then we do not propose to interfere with the same in this appeal.

12. Once we come to the conclusion that the judgment and award passed by the Tribunal does not call for any interference by this Court in the appeal filed by the appellants, then, there is no question of interfering with the same in the cross-objections filed by the claimants. Accordingly, cross-objections filed by the claimants are also required to be dismissed.

13. In view of the above discussion, both, this appeal as well as cross-objections filed by the claimants, fail and are hereby dismissed, with no order as to costs.

(B.J. Shethna, J.)

(Kundan Singh, J.)

/JVSatwara/